



DEPARTMENT OF ENERGY

10 CFR Part 1061

RIN 1990-AA50

Procedures for the Issuance of Guidance Documents

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; delay of effective date.

SUMMARY: This document delays the effective date of a recently published final rule establishing procedures for the issuance of Department of Energy guidance documents. DOE also seeks comment on any further delay of the effective date, including the impacts of such delay, as well comment on the legal, factual, or policy issues raised by the rule.

DATES: The effective date of the final rule published January 6, 2021, at 86 FR 451, is delayed to March 21, 2021. Written comments and information will be accepted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-33, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2555, Email: *Guidance@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On January 20, 2021, the Assistant to the President and Chief of Staff (“Chief of Staff”) issued a memorandum outlining the President’s plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy (“DOE”) hereby temporarily postpones the effective date of its final rule establishing procedures for the issuance of DOE guidance documents published in the *Federal Register* on January 6, 2021 (86 FR 451). The January 6, 2021 rule implemented Executive Order 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents” (84 FR 55235), which, among other things, required agencies to provide more transparency for their guidance documents by creating a searchable online database for current guidance documents, and by establishing procedures to allow the public to comment on significant guidance documents and to petition the agency to withdraw or modify guidance documents. Consistent with the memorandum, DOE is temporarily postponing the effective date of the final rule by 60 days, starting from January 20, 2021. The temporary 60-day delay in the effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff’s memorandum of January 20, 2021.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE’s implementation of this action without opportunity for public comment, effective immediately upon publication in the *Federal Register*, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined

that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. For these same reasons, DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d). DOE is, however, seeking comment on any further delay of the effective date, including the impacts of such delay, as well comment on the legal, factual, or policy issues raised by the rule.

Signing Authority

This document of the Department of Energy was signed on January 26, 2021, by John T. Lucas, Acting General Counsel, Office of the General Counsel, pursuant to delegated authority from the Acting Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on January 27, 2021.

Treena V. Garrett
Federal Register Liaison Officer,
U.S. Department of Energy

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